

REMARKS/ARGUMENTS

The present communication responds to the Office Action dated November 2, 2005. In that Office Action, the Examiner rejected claims 23, 25, 29-31, 33, 35, and 39-42 under 35 U.S.C. § 102(b). The Examiner further rejected claims 26-28, 32 and 36-38 under 35 U.S.C. § 103(a).

The Applicants have herewith amended claims 23, 33 and 40. No new matter has been added by these amendments. In view of the amendments and the following remarks, the Applicants respectfully request reconsideration and allowance of the pending claims.

Rejections Under 35 U.S.C. § 102(b)

Claims 23, 25, 29-31, 33, 35 and 39-42 stand rejected under 35 U.S.C. 102(b) over Japanese Patent No. 8-258851 (Patent '851). This rejection is traversed for at least the following reasons.

A rejection under § 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. In other words, there must be no difference between the claimed invention and the prior art reference disclosure as viewed by a person of ordinary skill in the art.

Claim 23 is Not Anticipated by Patent '851

Claim 23, as amended, is directed to a sealing apparatus. The apparatus of claim 23 includes an elongated receiver portion "having lugs, each lug having a proximal and distal end, the distal end projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion, said lugs provided at each location such that the proximal end of each lug is proximate to one of said first and second ridges and spaced apart from the opening."

In response to the Applicants' prior arguments, the Examiner, referring to Figure 8 of Patent '851, continues to assert that Patent '851 discloses the Applicants' invention:

Japanese Patent ('851) does disclose that lugs project outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion. Further the lugs (71) are spaced apart from the opening because they blend in to the arc before the two end points of receiver portion. (*Office Action, p. 7, para. 7*).

The Applicants respectfully submit that Patent '851, in contrast, fails to teach or suggest each lug having a *distal end* projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion. Rather, the "knob sections" 71 of Patent '851, shown in Figure 8, project away from the base in an upwardly direction from the opening 23 not downwardly, as recited in the Applicants' amended claim 23. Furthermore, this limitation is not satisfied merely by rotating the base 22 of Patent '851 counter-clockwise by ninety degrees, as suggested by the Examiner. Although rotating the base 22, shown in Figure 8, would produce an image of the invention wherein the "knob sections" 71 are projecting downwardly, they continue to lack the limitation that the distal end of the lugs project "*downwardly in the direction of the opening of the receiver portion.*" The Specification of the present invention discloses a lug configuration, for which "upwardly" and "downwardly" projecting have specific meanings. The claimed lugs having a distal end projecting generally "*downwardly in the direction of the opening of the receiver portion*" is not disclosed by Patent '851.

Moreover, Patent '851 fails to teach or suggest lugs provided at each location such that the proximal end of each lug is proximate to one of the ridges and spaced apart from the opening. Rather, "knob sections" 71 of Patent '851 directly abut the edges that bracket the opening 23, as shown in Figure 8. "Knob sections" 71 are not "spaced apart from the opening," as recited in the Applicants' amended claim 23. It is respectfully submitted that the Examiner's response that the "knob sections" 71 are spaced apart from the opening because they blend into the arc before the end points of the receiver portion is unsatisfactory, particularly in light of the present claim amendments. If the Examiner's assertion that the "knob sections" 71 were not a part of the end points of the receiver portion, then the "knob sections" 71 would not comprise of even a single end projecting downwardly in the direction of the opening of the receiver portion, let alone a distal end projecting "generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion" as claimed by the Applicants. Thus, Patent '851

fails to teach or suggest the invention of claim 23. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims Depending from Claim 23 Are Not Anticipated by Patent '851

Claims 25 and 29-31, which depend directly or indirectly from claim 23, incorporate all the limitations of claim 23 and are, therefore, also not anticipated by Patent '851. Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 33 is Not Anticipated by Patent '851

The Examiner, in the Office Action, refers to claim 33 as a method claim. The Applicants respectfully point out that claim 33 is an apparatus claim. However, in light of the Applicants' amendments, claim 33 is not anticipated by the prior art.

Claim 33, as amended, is directed to a sealing apparatus for sealing a bag. The apparatus of claim 33 includes an elongated receiver portion "having lugs, each lug having a proximal and distal end, the distal end projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion, the proximal end of one of said lugs provided at a location that is spaced apart from the opening and adjacent to said first ridge, the proximal end of another of said lugs provided at a location that is spaced apart from the opening and adjacent to said second ridge."

As previously mentioned, Patent '851 fails to teach or suggest each lug having a distal end projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion. For substantially similar reasons as set forth above, Patent '851 fails to teach or suggest the proximal end of each lug provided at a location that is "spaced apart from the opening and adjacent to" the first ridge and a proximal end of another lug provided at a location that is "spaced apart from the opening and adjacent to" the second ridge. Thus, Patent '851 fails to teach or suggest the invention of claim 33. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims Depending from Claim 33 Are Not Anticipated by Patent '851

Claims 35 and 39, which depend directly from claim 33, incorporate all the limitations of claim 33 and are, therefore, also not anticipated by Patent '851. Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 40 is Not Anticipated by Patent '851

Claim 40, as amended, is directed to a method for sealing a resealable bag,. The method of claim 40 includes providing apparatus having an elongated receiver portion further "having lugs, each lug having a proximal and distal end, the distal end projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion, said lugs provided at a location such that the proximal end of each lug is spaced apart from the opening and proximate to one of the ridges."

As previously mentioned, Patent '851 fails to teach or suggest each lug having a distal end projecting generally outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion. For substantially similar reasons as set forth above, Patent '851 fails to teach or suggest the proximal end of each lug provided at a location that is "spaced apart from the opening and proximate to one of the ridges. Thus, Patent '851 fails to teach or suggest the invention of claim 40. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims Depending from Claim 40 Are Not Anticipated by Patent '851

Claims 41 and 42, which depend directly from claim 40, incorporate all the limitations of claim 40 and are, therefore, also not anticipated by Patent '851. Reconsideration and withdrawal of the rejections are respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

Claims 26, 32 and 36 are Not Made Obvious by Patent '851 in view of Vargas

Claims 26, 32 and 36 stand rejected under 35 U.S.C. 103(a) over Patent '851 in view of Vargas (US Published Patent Application 2003/0188510). The Applicants assert these claims are allowable as depending from allowable claims. The Applicants further assert that the

combined references do not teach or suggest all of the claimed limitations of claims 26 and 36, and the rejection is traversed for at least these reasons.

Neither Patent '851 nor Vargas, alone or in combination, teach or suggest the invention of claims 26 and 36. Dependent claims 26 and 36 recite a "handle that extends at least a portion of the length of the receiver portion" and extends or projects "*outwardly and upwardly* from the receiver portion." *See, e.g.*, Figure 4. The Examiner acknowledges that Patent '851 does not disclose a handle but instead relies on Vargas as teaching a handle. However, Vargas discloses "[t]he handle means 16 comprises an elongate planar member 18 integrally formed with the C-shaped clamp member 14 such that the elongate planar member 18 is *generally tangential to* the elongate C-shaped clamp member 14." (*Vargas, para. [0010]; Figures 1 and 2*). Therefore, the handle disclosed in Vargas extends outwardly but not upwardly, as recited in claims 26 and 36.

The Examiner has responded to this argument noting:

[T]he handle of U.S. Application No. 2003/0188510 does extend upwardly by the amount of thickness of the handle. (*Office Action, p. 8, para. 7*).

The Applicants understand that during examination, the Examiner must give claims their broadest reasonable construction. However, under the Examiner's construction of a handle that "extends outwardly and upwardly," as recited in the Applicants' claims 26 and 36, every three-dimensional object would extend or project in every direction. Thus, the Applicants respectfully assert this construction is unreasonable and would render meaningless any terms used in any claims to reflect geometric locations and directions, such as "upwardly" and "downwardly," as recited by the Applicants. Such an unworkably broad interpretation of geometric language is clearly not what is intended when giving claims their broadest *reasonable* construction.

The Examiner also responded that Patent '851 discloses that protrusion 72 is extending outwardly and upwardly. The Applicants respectfully traverse that Patent '851 discloses a handle that projects "outwardly and upwardly from the *receiver portion*."

For at least these reasons, neither Patent '851 nor Vargas, alone or in combination, teach or suggest the invention of claims 26 and 36. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of pending claims 26, 32 and 36.

Claims 27, 28, 37 and 38 are Not Made Obvious by Patent '851

Claims 27, 28, 37 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Patent '851. The Applicants assert these claims are allowable as depending from allowable claims. The Applicants further assert that Patent '851 does not teach or suggest all of the claimed limitations of claims 27, 28, 37 and 38, and the rejection is traversed for at least the reasons previously provided.

Claims 27 recites "an opening that extends along a length of the sealing portion and a lanyard that extends through the opening," and claim 37 recites "an opening that extends along a length of the sealing portion and a lanyard formed into a loop that extends through the opening." Patent '851 clearly fails to teach or suggest a lanyard extending through an opening in part 21. Indeed, Examiner acknowledges, "Japanese Patent does not disclose expressly that the lanyard extends through the opening of the sealing portion." (*Office Action, p. 6, para. 6*). Instead, Examiner argues:

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard trough the opening because *Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. (Office Action, p. 6, para. 6).*

The Applicants respectfully disagree. Not only does extending the lanyard through an opening in the sealing portion as claimed have various uses, at least some of those uses are explicitly disclosed:

A lanyard 46...may be used as a hanger or handle so that the bag...may be hand-carried, or retained on a supporting hook...when a bag is retained by the sealing apparatus." (*Applicants' Spec., para. [0028]*).

Claims 28 and 38 recite “the lanyard is further coupled to the receiver portion.” Again, Patent ‘851 clearly fails to teach or suggest this limitation. Examiner argues:

One of ordinary skill in the art, furthermore, would have expected Applicant’s invention *to perform equally well with the lanyard (61) [of the Japanese Patent] attached to the sealing member and receiving portion* as disclosed in the Japanese Patent or the claimed lanyard extends through the opening of the sealing portion because *both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion . . . (Office Action, p. 6, para. 6).*

Again, the Applicants respectfully disagree. First, the “function” of the lanyard, as described above and in the Specification, may provide a hanger or handle. Configuring the lanyard to be coupled to the receiver portion, as recited in claims 28 and 38, avoids misplacing the receiver portion; while this “coupling” is useful, it is not necessarily the exclusive “function” of the lanyard.

Second, the connector 61 in Patent ‘851 would clearly *not* “perform equally well” as the lanyard of the present invention. As described, the lanyard of the present invention may provide a functional hanger or handle. In contrast, connector 61 is configured such that if it were used to carry the sealing clip of the Japanese patent, connector 61 would tug at part 21, to which connector 61 is connected, thereby increasing the likelihood that part 21 and base 22 would become unintentionally disengaged. This shortcoming is not present in the claimed configuration of claims 27, 28, 37, and 38 because any tension exerted on that lanyard when used to carry the sealing apparatus of the present invention would be born on sealing portion through which the lanyard extends.

For at least these reasons, Patent ‘851 fails to teach or suggest the limitations of claims 27, 28, 37, and 38. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of pending claims 27, 28, 37, and 38.

CONCLUSION

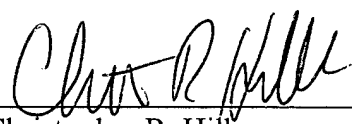
This application now stands in allowable form and reconsideration and allowance are respectfully requested.

No additional claim fees should be generated by this paper. However, the Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this paper to Deposit Account No. 04-1420.

Respectfully submitted,

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